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KLARQUIST SPARKMAN, LLP 121 SW SALMON STREET SUITE 1600 PORTLAND, OR 97204				
			EXAMINER KAUFFMAN, BRIAN K	
			ART UNIT 3765	PAPER NUMBER

DATE MAILED: 12/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/785,203	Applicant(s) ATTA ET AL.	
	Examiner Brian K Kauffman	Art Unit 3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 February 2004.
 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-52 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) ☒ Claim(s) 30 and 31 is/are allowed.
 6) ☒ Claim(s) 1-12, 15-20, 22, 24-29, 32-36, 38-40, 42-44 and 46-52 is/are rejected.
 7) ☒ Claim(s) 13, 14, 21, 23, 37, 41 and 45 is/are objected to.
 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
 10) ☒ The drawing(s) filed on 23 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date 2/23/04.
 4) ☐ Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____.
 5) ☐ Notice of Informal Patent Application (PTO-152)
 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 52 is rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for swim goggles, does not reasonably provide enablement for a set of instructions. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make the invention commensurate in scope with these claims. The set of instructions are never mentioned in the disclosure.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 52 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The preamble of claim 52 limits the scope of the claim to swimming goggles; however, the claim also includes a set of instructions for informing a user how to apply the tape to the eyepieces. The set of instructions lie outside the scope of the swimming goggles since they are two separate and distinct inventions. It is unclear to the examiner as to whether the instructions or the goggles should be addressed when examining the claim.

Claim Rejections - 35 USC § 102

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 7 and 9 are rejected under 35 U.S.C. 102(a) as being anticipated by Chiang (6,574,802). Chiang discloses swim goggles comprising a pair of unconnected eyepieces, each eyepiece adapted to provide a water-tight seal around an eye of a user during use of the goggles (fig. 2)

Claims 33-36, 40, 42-44, and 46-50 are rejected under 35 U.S.C. 102(b) as being anticipated by Webster (6,006,367).

In regard to claims 33-36, Webster discloses an eye piece for swim goggles comprising a body (70) adapted to be worn over the eye of a user and form a water-tight seal around the eye that isolates the eye from the surrounding environment during use, the body comprising a transparent lens portion (18) that includes a first, flat anterior lens (50) that is positioned in front of the eye in an as worn orientation and at least a second, flat lens (66) connected to the anterior lens at an obtuse angle and extending rearwardly therefrom, wherein the second lens reduces prismatic distortion of the lens (fig. 3).

In regard to claims 40, 42-44, and 46-47, Webster discloses swim goggles comprising a pair of eyepieces (70, 72), each eyepiece being shaped to provide a water-tight seal around an eye of a user during use of the goggles, each eyepiece having a flat, transparent anterior lens (50) that is positioned in front of a respective eye

in an as worn orientation and a flat, transparent side lens (66) connected to and inclined away from a respective anterior lens in a temporal direction so as to reduce hydrodynamic drag and prismatic distortion of the respective eyepiece (fig. 3).

In regard to claims 48-49, Webster discloses swim goggles comprising: two frame portions (70, 72), each being shaped to surround an eye and form to provide a water tight seal against the skin adjacent the respective eye; two, flat anterior lenses (50) coupled to respective frame portions, each anterior lens being oriented to reside in front of an eye in an as worn orientation; and two, flat side lenses (66), each connected to a respective anterior lens and extending rearwardly and temporally therefrom, each side lens being oriented with respect to an anterior lens such that there is no prismatic distortion of an image viewed along a line of sight intersecting the side lens (fig. 3).

In regard to claim 50, Webster discloses an eyepiece for swim goggles comprising a body (70) adapted to be worn over the eye of a user and form a water-tight seal around the eye that isolates the eye from the surrounding environment during use, the body comprising a transparent lens portion (18) that includes a first, anterior lens (50) having a flat anterior surface, wherein the anterior lens is positioned in front of the eye in an as worn orientation, and the lens portion also having at least a second lens (66) having a flat anterior surface, wherein the second lens is connected to the anterior lens at an obtuse angle and extends rearwardly therefrom so as to reduce prismatic distortion of the lens portion.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Runckel (5,331,691) in view of Lane et al. (6,609,255).

Runckel discloses an eyepiece for swim goggles comprising: a protective body adapted to be worn over an eye of a user and form a substantially water-tight seal around the eye that substantially isolates the eye from the surrounding environment during use (col. 5, lines 28-32). Runckel also discloses that the body comprise a transparent lens portion (14) and a frame portion (16,18) surrounding the lens portion wherein the frame portion is shaped to generally conform to the shape of the orbital rim (col. 5, lines 28-32) and that the frame portion be configured to enable the user to retain the eyepiece in place by contracting the orbicularis oculi muscles against the frame portion (fig.2). Runckel also discloses that the frame portion is configured to fit at least partially within the orbital rim (fig. 2). Runckel does not disclose an adhesive layer

carried by the frame that comprises adhesive tape and adhesively secures the body to the skin of the user. Lane et al. discloses replacing the strap that holds the body in place with adhesive tape carried by the frame (col. 3, lines 39-42). The adhesive tape provides an alternative means to attach the body to the face. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Runckel's apparatus by replacing the strap which serves the function of attaching the body to the face and subsequently creating a water-tight seal with an adhesive layer that would serve the function of attaching the body to the face and subsequently creating a water-tight seal as an alternative means as taught by Lane et al.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Runckel (5,331,691) in view of Lane et al. (6,609,255) in further view of Morgan (5,940,892). Neither Runckel nor Lane et al. disclose a cover layer overlaying the adhesive layer being adapted to be removed from the adhesive layer prior to use. Morgan does disclose a cover layer overlaying the adhesive layer being adapted to be removed from the adhesive layer prior to use (col. 5, lines 9-19). The cover layer acts as protection for the adhesive layer from contaminants that might reduce the gripping strength of the adhesive tape. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the combination of Runckel and Lane et al. to include a cover layer as taught by Morgan in order to provide protection from contaminants that might reduce the gripping strength of the adhesive tape.

Claims 8, 15-16, 20, 22, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chiang (6,574,802) in view of Lane et al. (6,609,255).

In regard to claims 8 and 15-16, Chiang discloses that each eyepiece include a body (2). Chiang does not disclose an adhesive for adhering the body to the user's skin adjacent a respective eye wherein each eyepiece has a layer of adhesive tape for adhesively securing the eyepiece to the skin and that the adhesive tape comprise a deformable layer having an adhesive surface for adhering to the skin. Lane et al. does disclose an adhesive for adhering the body to the user's skin adjacent a respective eye wherein each eyepiece has a layer of adhesive tape for adhesively securing the eyepiece to the skin and that the adhesive tape comprise a deformable layer having an adhesive surface for adhering to the skin (col. 3, lines 39-42). The adhesive tape provides an alternative means to attach the body to the face. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Chiang's apparatus by replacing the strap which serves the function of attaching the body to the skin and subsequently creating a water-tight seal with an adhesive layer as an alternative means of attaching the body to the skin of the user and subsequently creating a water-tight seal as taught by Lane et al.

In regard to claims 20, 22, and 24, Chiang discloses a method of using a pair of unconnected eyepieces (fig. 4) wherein securing each eyepiece to the user's face comprises adhering each eyepiece to the skin creating a water-tight seal between the face and the eyepiece (col. 3, lines 28-29). Chiang does not disclose that the goggles shall be strapless and that the eyepieces shall be secured to the user's face without a

Art Unit: 3765

strap. Chiang also does not disclose that securing each eyepiece to the user's face comprises adhering each eyepiece to the skin. Lane et al. does disclose that the goggles shall be strapless and that the eyepieces shall be secured to the user's face without a strap wherein the method of securing shall comprise adhering each eyepiece to the skin (col. 3, lines 39-42). Adhering the eyepieces to the skin provides an alternate means for securing the eyepieces to the skin of the user creating a water-tight seal between the face and the eyepiece. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Chiang's method to secure the eyepieces to the user's skin by using an adhering means rather than straps as taught by Lane et al. since adhering the eyepieces to the skin performs the same function as the straps.

Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chiang (6,574,802) in view of Lane et al. (6,609,255) in further view of Runckel (5,331,691).

Neither Chiang nor Lane et al. disclose positioning at least a portion of each eyepiece within an orbital rim. Runckel does disclose positioning at least a portion of each eyepiece within an orbital rim (fig. 2). Positioning at least a portion of each eyepiece within an orbital rim creates minimal water resistance (col. 2, lines 34-59). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the combination of Chiang and Lane et al. by positioning at least a portion of each eyepiece within an orbital rim as taught by Runckel in order to minimize water resistance.

Claims 10-12 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chiang (6,574,802) in view of Runckel (5,331,691). Chiang discloses that each eyepiece comprise a transparent lens portion (22) and a frame portion (20). Chiang does not disclose that the peripheral flanges be sized and shaped to fit at least partially within the respective orbital rims each peripheral flange having an upper nasal portion and lower nasal portion that fit within the respective orbital rim and that each peripheral flange have a lower temporal portion that fits at least partially within a respective orbital rim and that the eyepieces can be retained in place by contracting the orbicularis oculi muscles against the frame portions. Runckel does disclose that the peripheral flanges be sized and shaped to fit at least partially within the respective orbital rims each peripheral flange having an upper nasal portion and lower nasal portion that fit within the respective orbital rim and that each peripheral flange have a lower temporal portion that fits at least partially within a respective orbital rim and that the eyepieces can be retained in place by contracting the orbicularis oculi muscles against the frame portions (fig. 1, fig. 2). The disclosed configuration creates minimal water resistance (col. 2, lines 34-59). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Chiang's device to require the peripheral flanges to be sized and shaped to fit at least partially within the respective orbital rims, each peripheral flange having an upper nasal portion and lower nasal portion that fit within the respective orbital rim and each peripheral flange having a lower temporal portion that fits at least partially within a respective orbital rim and that the eyepieces can be

retained in place by contracting the orbicularis oculi muscles against the frame portions as taught by Runckel in order to minimize water resistance.

Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chiang (6,574,802) in view of Runckel (5,331,691) in further view of Lane et al. (6,609,255) in further view of Morgan (5,940,892). Chiang discloses swim goggles comprising: a pair of unconnected eyepieces (fig. 1), each eyepiece adapted to provide a water-tight seal around an eye of a user during use of the goggles (col. 3, lines 26-29); each eyepiece comprising a transparent lens portion (22) and a frame portion (20) surrounding the lens portion. Chiang does not disclose that each frame portion be configured to fit at least partially within an orbital rim, each frame portion being adapted as to enable the user to retain the eyepieces against the face by contracting the orbicularis oculi muscles.

Runckel does disclose that each frame portion be configured to fit at least partially within an orbital rim, each frame portion being adapted as to enable the user to retain the eyepieces against the face by contracting the orbicularis oculi muscles (fig. 2).

Positioning at least a portion of each eyepiece within an orbital rim creates minimal water resistance (col. 2, lines 34-59). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Chiang's device to configure the frame portions to at least fit partially within an orbital rim as taught by Runckel in order to minimize water resistance. Neither Chiang nor Runckel disclose a layer of adhesive tape secured to the frame portion of each eyepiece and having an adhesive surface for adhering to the skin adjacent to the eye. Lane et al. does disclose a layer of adhesive tape secured to the frame portion of each eyepiece and having an

adhesive surface for adhering to the skin adjacent to the eye (col. 3, lines 39-42). The adhesive tape provides an alternative means to attach the body to the face. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the combination of Chiang and Runckel by replacing the strap which serves the function of attaching the body to the skin and subsequently creating a water-tight seal with an adhesive layer as an alternative means of attaching the body to the skin of the user and subsequently creating a water-tight seal as taught by Lane et al. Neither Chiang, Runckel, nor Lane et al. disclose a removable cover overlaying the adhesive surface of each layer of adhesive tape. Morgan does disclose a removable cover overlaying the adhesive surface of each layer of adhesive tape (col. 5, lines 9-19). The cover protects the adhesive surface from contaminants which would weaken the strength of the adhesive. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the combination of Chiang, Runckel, and Lane et al. to include the protective cover as taught by Morgan in order to protect the adhesive surface from contaminants that might weaken the grip of the adhesive.

Claims 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chiang (6,574,802) in view of Webster (6,006,367). Chiang discloses that each eyepiece comprise a flat anterior lens portion (22) that is positioned in front of an eye in an as worn orientation and an annular peripheral wall (20) that surrounds the respective anterior lens portions. Chiang does not disclose a flat side lens portion that extends rearwardly and temporally from a respective anterior lens portion at an obtuse angle. Webster does disclose a flat side lens portion (64) that extends rearwardly and

Art Unit: 3765

temporally from a respective anterior lens portion at an obtuse angle (fig. 6). The side lens portion allows the wearer of the goggles to be able to see horizontally an object or person in front of the wearer while he or she is swimming with his or her head facing generally down in the water (col. 3, lines 61-65). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Chiang's device by adding a flat side lens portion that extends rearwardly and temporally from a respected anterior lens portion at an obtuse angle as taught by Webster in order to allow the wearer of the goggles to be able to see horizontally an object or person in front of the wearer while he or she is swimming with his or her head facing generally down in the water.

Claims 26-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Webster (6,006,367) in view of Lane et al. (6,609,255). Webster discloses an eyepiece for swim goggles comprising: a body (70) comprising a transparent lens (18) and a peripheral flange (28) surrounding the lens, the flange having a posterior surface (fig. 2). The lens comprises a flat anterior lens portion (50) that is positioned in front of an eye in an as worn orientation and a flat side lens portion (66) that extends rearwardly and temporally from the anterior lens portion at an obtuse angle (fig. 3). The body further comprises an annular peripheral wall (60) that surrounds the anterior lens portion extending between the anterior lens portion and the flange. The lens has optical power. Webster does not disclose an adhesive layer mounted on the posterior surface of the flange. Lane et al. does disclose an adhesive layer mounted on the posterior surface of the flange (col. 3, lines 39-42). The adhesive tape provides an alternative means to

attach the body to the face. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Webster's apparatus by replacing the strap which serves the function of attaching the body to the face and subsequently creating a water-tight seal with an adhesive layer that would serve the function of attaching the body to the face and subsequently creating a water-tight seal as an alternative means as taught by Lane et al.

Claim 38 is rejected under 35 U.S.C. 103(a) as being unpatentable over Webster (6,006,367) in view of Runckel (5,331,691). Webster does not disclose that the frame portion be shaped to generally conform to the shape of the orbital rim. Runckel does disclose that the frame portion be shaped to generally conform to the shape of the orbital rim (fig. 2). Shaping the frame to conform to the shape of the orbital rim creates minimal water resistance (col. 2, lines 34-59). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Chiang's device to conform the frame to the shape of the orbital rim as taught by Runckel in order to minimize water resistance.

Claim 39 is rejected under 35 U.S.C. 103(a) as being unpatentable over Webster (6,006,367) in view of Runckel (5,331,691) in further view of Lane et al. (6,609,255). Neither Webster nor Runckel disclose that the frame portion has an adhesive layer that adhesively secures the eyepiece to the skin of the user in close proximity of the eye. Lane et al. does disclose that the frame portion has an adhesive layer that adhesively secures the eyepiece to the skin of the user in close proximity of the eye (col. 3, lines 39-42). The adhesive layer provides an alternative means to attach the body to the

Art Unit: 3765

face. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the combination of Webster and Runckel by replacing the strap which serves the function of attaching the body to the face and subsequently creating a water-tight seal with an adhesive layer that would serve the function of attaching the body to the face and subsequently creating a water-tight seal as an alternative means as taught by Lane et al.

Claim 38 is rejected under 35 U.S.C. 103(a) as being unpatentable over Webster (6,006,367) in view of Decorato (3,944,345). Webster does not disclose one or both of the first and second lenses are corrective lenses having optical power. Decorato does disclose that both lenses are corrective lenses having optical power (col.4, lines 37-44). The corrective lenses allow swimmers with impaired vision to use them (col. 3, lines 9-10). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify lenses of Webster's device to be corrective lenses as taught by Decorato so that swimmers with impaired vision can use the goggles.

Allowable Subject Matter

Claims 13-14, 21, 23, 37, 41, and 45 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 30-31 are allowed.

The following is an examiner's statement of reasons for allowance:

Claim 13 specifically requires each eyepiece to have a minimum depth of less than 8mm.

Claim 14 specifically requires each eyepiece to have a minimum depth of 5.75 mm or less.

Claim 21 specifically requires the method of securing each eyepiece to the user's face comprise creating a vacuum between each eyepiece and the face without the aid of a strap.

Claim 23 specifically requires the method of securing each eyepiece to the user's face comprise retaining the eyepieces in place by contracting the orbicularis oculi muscles against the eyepieces.

Claims 30-31 specifically require that the posterior surface of the flange and the posterior surface of the lens define a minimum depth of the eyepiece that is less than 8 mm.

Claims 37 and 45 specifically require the side lens to be connected to the anterior lens at an angle of about 144 degrees.

Claim 41 specifically requires that each eyepiece has a minimum depth of 6mm or less.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian K Kauffman whose telephone number is (571)272-4988. The examiner can normally be reached on M-F every week.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (571)272-4983. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

BKK


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